IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3602 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMAR MANILAL KHANABHAI

Versus

COMMISSIONER OF LABOUR

Appearance:

1. Special Civil Application No. 3602 of 1992

MR PV HATHI for Petitioner No. 1

MR.A.D. OZA, GOVERNMENT PLEADER for Respondent No. 1,3

MR JB PARDIWALA for Respondent No. 2

RULE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 03/09/2004

ORAL JUDGEMENT

The present petition is filed praying to declare that, 'the result of the petitioner is illegal, improper and unreasonable' and also that 'the petitioner is entitled to benefits of Government Resolution of December 1991 as regards revised standard of passing and grace marks and he is entitled to be declared as successful in the said examination held by respondent no.4 in October 1991, the result of which is declared in April 1992'. After an order was passed on 23.07.2004, the matter was heard on 02.08.2004 and 11.08.2004. On 11.08.2004 the learned Assistant Government Pleader, Mr.M.A. Patel served a copy of the affidavit in reply to the learned advocate for the petitioner. Mr.Oza, the learned Government Pleader appearing with Mr.A.Y. Kogje, the learned Assistant Govt. Pleader states that the said affidavit in reply was filed in the Computer Centre on the same day. However, the same is not available on the record. The learned Government Pleader made available a copy of the said affidavit in reply along with an annexure-letter dated 09.08.2004, addressed to the Additional Commissioner, Sardar Patel Institute of Public Administration, Ahmedabad, by General Administration Department. The learned Government Pleader also placed on record an amendment dated 20.08.2004. By this amendment the petitioner is declared 'pass'. On this declaration of the result being 'pass', the petition does not survive, except for the purpose that the petitioner be declared entitled to all the consequential benefits, flowing from the declaration of the result.

2. Mr.Hathi, the learned advocate appearing for the petitioner submitted that the petitioner had filed Civil Application No.7817 of 2003, which was disposed of by this Court (Coram: P.B. Majmudar, J.). by order dated 07.11.2003 which reads as under:

"1. This Civil Application cannot be entertained, as the controversy in the main Special Civil Application and the amendment which is sought for are entirely different. However, it is open for the petitioner to challenge the decision of the department by filing the substantive special civil application instead of amending the petition.

2. Subject to what is stated above, this civil application is rejected. The hearing of the main matter is expedited and the same is fixed for final hearing on 19.11.2003. Office is directed to place the main matter on separate

board for final hearing on that day. It is clarified that, in case, the petitioner succeeds in the main petition, naturally, the petitioner will be entitled to all the benefits, but at this stage, no amendment is required."

3. In view of the clarification contained in the aforesaid order, no further order is required to be passed in this Special Civil Application. However, at the request of Mr.Hathi, the learned advocate for the petitioner it is reiterated that, 'the petitioner is entitled to all the benefits, flowing from the aforesaid declaration of the result declaring the petitioner 'pass'. The Department, respondent no.2 shall consider the said result of the petitioner and issue necessary consequential orders in this regard, within eight weeks from the date of receipt of this order. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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